

FILED
U.S. DISTRICT COURT
W.D.N.Y. BUFFALO

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

2006 MAY 24 AM 10:51

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ROBERT CHRISTOPHER KETTENBURG,

Plaintiff,

04-CV-0957E

-v-

MEMORANDUM and ORDER

WAL-MART,

Defendant.


Upon filing of the complaint herein, the Court (Hon. Charles J. Siragusa) entered an order dismissing the complaint as frivolous, pursuant to 28 U.S.C. § 1915(e)(2)(B), and imposed a sanction against plaintiff enjoining him from filing any further actions in this Court without first obtaining court permission. (Docket No. 3, Decision and Order). The sanction was imposed because within six weeks of filing this action plaintiff had filed 15 actions against 15 different defendants, all of which had been dismissed as frivolous pursuant to 28 U.S.C. § 1915(e)(2)(B). (Docket No. 3, Order, n. 1). Judgment was entered and plaintiff filed a Notice of Appeal. (Docket Nos. 4 and 5).

On appeal, the Court of Appeals dismissed the plaintiff's appeal because it lacked an arguable basis in law or fact but vacated and remanded that part of this Court's order which had enjoined plaintiff from filing further actions without leave of court because this Court had failed to provide plaintiff with notice an opportunity to be heard on the issue of whether and to what extent plaintiff should be enjoined from filing any further actions in this Court. (Docket No. 6, Mandate of United States Court of Appeals for the Second Circuit).

Accordingly, it is hereby ORDERED that plaintiff must submit, by **June 24, 2006**, an affidavit not to exceed ten (10) pages in length, and therein to show cause why this Court should not impose the sanction, previously set forth in the Court's Decision and Order, entered December 23, 2004, of prohibiting plaintiff from filing any further actions in this Court without first obtaining permission from the Court to do so. If plaintiff does not submit an affidavit by June 24, 2006, the sanction imposed against him as set forth in the Court's prior Decision and Order, entered December 23, 2004 (Docket No. 3), will be imposed again and plaintiff will thereafter be barred filing any additional actions in this Court or serve summonses and complaints in any additional actions in this Court without first obtaining the prior approval of the Court.

SO ORDERED.

DATED: Buffalo, New York
May 22, 2006



JOHN T. ELFVIN
UNITED STATES DISTRICT JUDGE